IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5269 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHAMAR KAUSHIKBHAI CHOTALAL & 6 - Petitioner(s)

Versus

STATE OF GUAJRAT & 4 - Respondent(s)

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Appearance :
HL PATEL ADVOCATES for Petitioners
MR SIRAJ GORI, AGP for Respondent No. 1,
None for Respondent(s) : 2 - 4.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 19/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Rule. Mr. Siraj Gori, AGP waives service of Rule on behalf of the respondent no.1. As the dispute is between

the petitioners and the respondent no.1, we dispense with service of notice of Rule on respondent no.2-Nagarpalika, who has not chosen to file any writ application and upon respondent nos. 3 and 4 who are subordinate Tribunals.

1. Present is a writ application against the order dated 21.12.2004 passed by the Director of Municipalities, Gujarat State, Gandhinagar, submitting inter alia that the order passed by the Director, confirming the order dated 11.10.2004 passed by the Collector, Sabarkantha in the appeal preferred by the State Government against the Talod Nagarpalika is bad and contrary to law. The facts giving rise to the present writ application are that the Municipality invited certain objections in relation to imposition of the property tax. After deciding the objections, the Municipality observed that education cess under the Gujarat Education Cess Act, 1962 would be recovered from the financial year 2000-01. The State Government being aggrieved by the said order preferred an appeal to the Collector against the resolution of the Municipality. The Collector, after hearing the parties, observed that as the Municipality came into existence with effect from 1994, the liability of the property tax payer to pay the

education cess would be from the year 1994. The Municipality being aggrieved by the said order of the Collector, preferred further appeal to the Director of Municipalities, who by his impugned order, dismissed the appeal, therefore, the petitioners are before this Court.

2. Learned counsel for the petitioners vehemently submitted that if the Municipality had already resolved to recover the education cess from the financial year 2000-01, then, the Collector had no authority to direct its retrospective recovery from the year 1994, that is, from the year of constitution of the Municipality. Referring to Section 15 of the Act and Rule 3 of the Gujarat Education Cess Rules of 1962, it was submitted that before recovering the tax, objections are to be invited and therefore, the Collector was not justified in giving retrospective effect to the applicability/imposition of the education cess.

3. Section 12 of the Act of 1962 provides that subject to the provisions of the Act, there shall be levied and collected with effect from the 1st day of April, 1970 a tax on lands and buildings situated in a urban area at the rates as prescribed under sub-section (1) of Section

12. Imposition of the tax or the liability to pay the tax is automatic. It is not dependent upon a resolution passed by a cantonment or municipality or any local authority. The moment, the Act says that the tax shall be levied and collected with effect from a particular date or from the date of the constitution of the Municipality, then, the Municipality is not required to pass a resolution that the education cess would be recoverable from a particular date. If the liability is automatic and imposition is the result of the statutory provision, then, the Municipality would simply be a recovering agent, it would have no authority to say that from a particular date, tax would be levied and recovered.

4. The authority of the Municipality is only to decide that what property tax is leviable on a particular property. The moment property tax is levied, the amount payable by a property holder would provide a foundation for section 12 of the Act of 1962. Section 13 of the Act of 1962 provides that the tax under Section 12 shall not be leviable in respect of a particular property or under the orders of the State Government. From Section 13 it would clearly flow that the tax which is imposable and recoverable, can be exempted by the State government in

relation to a particular property under Section 13 of the Act of 1962.

5. Section 15 on which very strong reliance is placed, does not deal with the power of any authority to impose tax. It refers to the authorities which are competent to collect the tax. It says that the tax under Section 12 shall be collected in the Cantonment of Ahmedabad by the Collector of Ahmedabad and in other urban areas by the respective local authorities concerned. Sub-section [1] of Section 15 further provides that, where a local authority is not for the time being levying a property tax or where a local authority has made a default in the collection of the tax or payment thereof to the State Government, the State Government may by order direct that the tax shall be collected by the Collector. Section 15 has nothing to do with the imposition of the tax, it provides a machinery for recovery of the tax. Rule 3 of the 1962 Rules provides that, the Collector, while recovering the tax shall observe a particular procedure. In our considered opinion, Rule 3 of the Rules shall not apply if tax is to be collected by a particular local authority. Even otherwise, it would be for the State Government to direct the Collector that in a case where

the local authority has failed to collect the tax or has not made payment thereof to the State Government, the Collector should recover the amount of cess in accordance with the Rules. A conjoint reading of Section 15 read with Rule 3 would only provide that the State Government, to avoid loss of cess/revenue, can employ machinery of the Collector for recovery of the education cess from a date other than the date given in the Act or from a date of constitution of the Municipality. It is not in dispute before us that the Municipality of Talod was constituted in the year 1994. If that be so, the liability to pay the tax would be from the date of the constitution of the Municipality and not from any other date as decided by the Municipality. The Municipality only has the authority to decide or fix the property tax which may provide a foundation for recovery of the education cess.

6. Learned counsel for the petitioners next contended that the authorities have issued the bills for recovery without following the procedure. As the said question is not relevant or germane for disposal of this writ application, we refuse to interfere with that issue. However, we make it clear that if the law provides for raising of the objections against the recovery of

education cess, then, the petitioners, certainly would be entitled to submit their objections to the concerned authority who is proceeding to make recovery.

7. So far as the order of imposing tax with effect from 1994 is concerned, we uphold the said action, but however, with the clarification aforesaid. The petition is dismissed. No costs.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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